

ASSEMBLY BILL

No. 2708

Introduced by Assembly Member Bill Berryhill

February 19, 2010

An act to add Sections 14838.8 and 14838.9 to the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2708, as introduced, Bill Berryhill. State contracts: procurement practices: small businesses.

The Small Business Procurement and Contract Act (hereafter the Act) requires the directors of the Department of General Services and other state agencies entering into contracts for the provision of goods, information technology, and services to the state, and in the construction of state facilities, to provide for a preference, as specified, for any bid to small businesses and microbusinesses, under specified circumstances.

This bill would prohibit the Director of General Services and the directors of other state departments or offices that enter into contracts from engaging in bundling of contracts. This bill would also require the director or any agency, department, board, or commission to provide for the participation of subcontractors that are small businesses and microbusinesses in awarding contracts for goods and services by directly contracting with a small business or microbusiness. The bill would specify that the Act is not implemented by awarding a contract for goods to a prime contractor that engages a small business or microbusiness as a subcontractor.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 14838.8 is added to the Government Code, to read:

14838.8. (a) It is the intent of the Legislature that state agencies and departments shall prevent unnecessary and unjustified bundling of contract specifications and requirements that exclude certified small businesses from direct participation as prime contractors in contracts for goods.

(b) Notwithstanding any other law, in order to facilitate the participation of small businesses, including microbusinesses, in the provision of goods to the state, the Director of General Services and the directors of other state departments or agencies that enter into contracts within their respective areas of responsibility shall not engage in bundling of contracts, which has the effect of restricting or excluding small businesses from the state contracting process.

(c) As used in this section, the following terms apply:

(1) "Bundling of contracts" means a use of solicitation for a single contract or a multiple award contract to satisfy two or more requirements of any state agency, department, board, or commission for goods that restricts competition or limits the number of suppliers by being likely unsuitable for award to a small business due to any one or more of the following:

(A) The diversity, size, or specialized nature of the elements of the performance specified.

(B) The aggregate dollar value of the anticipated award.

(C) The geographical dispersion of the contract performance sites.

(D) Restrictive contract requirements or any other similar procurement strategy or factor that limits the ability of a responsible small business to compete or otherwise participate as a prime contractor in the procurement process.

(2) "Contract" includes miscellaneous contracts.

SEC. 2. Section 14838.9 is added to the Government Code, to read:

14838.9. Notwithstanding any other law, the director or any agency, department, board, or commission shall provide for the participation of subcontractors that are certified small businesses and microbusinesses in awarding contracts for goods by directly

1 contracting with a small business or microbusiness. The director
2 or any agency, department, board, or commission does not facilitate
3 or provide for small business or microbusiness participation within
4 the meaning of chapter by awarding a contract for goods to a prime
5 contractor that engages a small business or microbusiness as a
6 subcontractor on that contract.

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